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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

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11 MICHELLE DAVIS; NICOLE
JOHNSON; CLAUDIA ARIZA,

12 Plaintiffs,

13 vs.

14 CITY OF SAN DIEGO, a
municipal corporation;
15 CHRISTOPHER R. HAYS,

16 Defendants.

17

CASE NO. '14CV1488 DMS DHB

COMPLAINT FOR:

1. **Violation Of Civil Rights,
42 U.S.C. § 1983; and**
2. **Violation Of 42 U.S.C. § 3789d**

Demand For Jury Trial

18

Plaintiffs Michelle Davis, Nicole Johnson and Claudia Ariza allege:

19

GENERAL ALLEGATIONS

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1. Plaintiff Michelle Davis resides in San Diego County, California.
2. Plaintiff Nicole Johnson resides in San Diego County, California.
3. Plaintiff Claudia Ariza resides in San Diego County, California.
4. Defendant City of San Diego (the "City") is a municipal corporation within California.

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5. At all material times, defendant Christopher R. Hays resided in San Diego, California and was employed as a police officer by the City with San Diego Police Department ("SDPD").

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1 6. At all material times, Hays was employed as a police officer by the City
2 and in doing the acts alleged in this complaint was acting within the course and scope
3 of his employment as a police officer with the City.

4 7. Jurisdiction is proper in this Court per 28 U.S.C. 1331, a Federal
5 question.

6 8. Venue is proper in this district per 28 U.S.C. 1391(b)(1) because the
7 defendants reside in this district and the occurrences or omissions that plaintiffs'
8 claims arise from happened in this district.

9 9. Part of the events that led to plaintiffs' claims began, at the latest, in 1994
10 when one Anthony Arevalos graduated from the San Diego Police Academy and
11 immediately became employed as a police officer with SDPD and the City. The City,
12 the SDPD and SDPD's supervisory officials, failed to properly test, screen, examine,
13 evaluate or train Arevalos before hiring him as a police officer. As a result, the City,
14 SDPD and SDPD supervisory officials failed to properly identify Arevalos for what
15 he was — a dangerous sexual predator. Had the SDPD, the City and SDPD
16 supervisory officials properly tested, screened, examined, evaluated and trained
17 Arevalos, he never would have been hired as a police officer.

18 10. Upon information and belief, SDPD's supervisory officials and the City
19 had knowledge of the following as of September 2009:

20 a. In the 1999, when Arevalos was working general patrol in the
21 SDPD's South Bay Division, he took into custody a nude and mentally deranged
22 young woman as a Health & Welfare Code § 5150 detainee and then taunted and
23 encouraged the woman to sexually penetrate herself vaginally with his department-
24 issued baton/night stick while he watched and took Polaroid photographs of her doing
25 this;

26 b. A complaint by a woman that, during a traffic stop of her by
27 Arevalos in April or May 2001, that Arevalos, during an unlawful search of the woman,
28 groped the woman's breast and sexually assaulted her;

1 c. Around July 2007, Arevalos pulled over a 16-year old female driver
2 during a routine traffic stop and forced her to bend over outside of her vehicle to show
3 him her current registration tabs on the license plate — all for the purpose of Arevalos
4 "checking out" or ogling the young woman's butt;

5 d. That Arevalos, after being assigned to the SDPD traffic division
6 and its special driving under the influence, or "DUI" enforcement unit, regularly and
7 unnecessarily targeted for investigation and arrest for DUI primarily young women
8 under 35 years of age to the extent that other police officers derisively referred to
9 Arevalos as the "Las Colinas Transport Unit;"

10 e. Arevalos routinely had large amounts of unaccounted for or
11 "missing" time during his shifts, in particular, during stops of female motorists, that
12 were never adequately explained in his written reports or shift diaries;

13 f. Arevalos, using the camera on his cellular phone, surreptitiously
14 took photographs of young women in the Gaslamp Quarter in downtown San Diego
15 and forwarded the photographs to other police officers, including to his supervisor,
16 Sergeant Kevin Friedman;

17 g. Among the photographs Arevalos took and shared with fellow
18 police officers and supervisors were photographs of him being orally copulated and
19 engaging in sexual intercourse in uniform all in the back of a SDPD patrol car, some
20 of which he kept in an album at the police station;

21 h. Arevalos bragged when showing these photographs to other police
22 officers and his supervisors that he was the uniformed officer in the photographs;

23 i. In September 2009, rather than arresting a woman Arevalos had
24 detained for driving while under the influence or DUI, he solicited a bribe of a sexual
25 favor from her in return for releasing her, a felony under Penal Code § 68, and then
26 sexually assaulted her anyway; and

27 j. Other information about citizens' or other police officers'
28 complaints about Arevalos' misconduct, conduct unbecoming a police officer or

1 conduct that violated SDPD procedures or standard police procedures for handling
2 traffic stops or performing physical searches of suspects, in particular, women.

3 11. The 1999 incident with Arevalos and the mentally deranged woman
4 described in paragraph 10.a. above was interrupted by another police officer who
5 reported the incident. Arevalos physically threatened the officer warning him to never
6 again interrupt him. Nevertheless, the police officer, who is now retired, reported the
7 incident to his and Arevalos' supervisors, Sergeant Danny Hollister and Sergeant (now
8 Lieutenant, and head of the powerful SDPD Criminal Intelligence Unit) Rudy Tai. Tai
9 passed the information on to his supervisor, Lieutenant Jorge Guevara. Neither
10 Hollister, Tai nor Guevara did anything to report the incident involving Arevalos and
11 the deranged young woman up the SDPD chain of command, or to other SDPD
12 supervisory officials charged with investigating officer misconduct. Rather, along with
13 Arevalos, they destroyed the Polaroid photographs taken by Arevalos and other
14 evidence of the incident. Tai also gave Arevalos a verbal reprimand, something Tai
15 knew would not appear on Arevalos' personnel record and could mislead police
16 officials that Arevalos had never been involved in suspected misconduct toward
17 citizens. In addition, Guevara, Tai and Hollister, with the support of other police
18 officers and other SDPD supervisory officials, carried out a campaign of abuse,
19 intimidation and harassment against the police officer who reported the incident to
20 punish him for making the complaint against a fellow officer, Arevalos. This included
21 initiating improper conduct with that police officer's minor daughter.

22 12. This 1999 cover up of Arevalos' criminal misconduct and cover up of
23 later misconduct by him and other officers was done as part of a long-standing
24 unwritten SDPD policy that encouraged a two-tiered system of justice—one a system
25 of unwritten privileges and immunities that applied to SDPD police officers and other
26 members of the "law enforcement community" and another system of codified laws
27 and regulations that applied to the ordinary citizens. This SDPD "unwritten policy"
28 included not ticketing SDPD police officers stopped for Vehicle Code violations,

1 including DUI, and also "fixing tickets" for SDPD police officers, as well as other law
 2 enforcement officers and officials. This "unwritten policy" also manifested itself with
 3 SDPD police officers and SDPD supervisory officials discouraging fellow police
 4 officers from reporting instances of suspected police officer misconduct to their
 5 supervisors, or SDPD Internal Affairs ("IA") the division of the department charged
 6 with investigating police officer misconduct. The policy further included SDPD police
 7 officers and supervisory officials covering up reports of officer misconduct. This
 8 policy has continued through the present time.

9 13. The April or May 2001 incident described in paragraph 10.b. above was
 10 reported by the victim to Arevalos' supervisors at SDPD, as well as to other SDPD
 11 supervisory officials. The then SDPD police chief, David Bejarano, learned of the
 12 report and the incident. He met with the victim twice and she described to him the
 13 details of the traffic stop and sexual assault by Arevalos. Chief Bejarano told the
 14 victim Arevalos had already been properly disciplined and would never again be
 15 allowed to do what he did to her or any other citizen. This was a complete
 16 misrepresentation as Arevalos was never punished or disciplined for that 2001
 17 incident.

18 14. The minor involved in the July 2007 traffic stop described in paragraph
 19 10.c., her father and a family friend who was a SDPD sergeant reported the incident
 20 to Arevalos' supervisors, Sergeant Matt Verduzco and Lieutenant Victoria Binkerd.
 21 The documentation on the report was destroyed, the matter was not investigated and
 22 the family friend was rebuked by fellow officers and SDPD supervisory officials for
 23 "siding with a civilian" against a fellow officer, Arevalos.

24 15. The victim of the September 2009 incident described in paragraph 10.i.
 25 reported the incident to an SDPD detective who, because of the "unwritten policy"
 26 described in paragraph 12, failed to report the incident to his superiors or other SDPD
 27 supervisory officials to IA.

28 16. SDPD supervisory officials and the City also had knowledge of a

1 February 2010 complaint by a woman who was arrested for DUI by Arevalos in
 2 January 2010. She notified SDPD that Arevalos had either assaulted or sexually
 3 assaulted her in the back seat of his police car while he was transporting her to the Las
 4 Colinas Women's Facility. SDPD supervisory officials and the City believed this was
 5 a crime committed by Arevalos and recommended prosecuting him for these crimes
 6 to the Office of the District Attorney, San Diego County. However, SDPD
 7 supervisory officials, along with Sergeant Friedman, Arevalos' supervisor, and other
 8 police officers, impaired the effective exercise of prosecutorial discretion to prosecute
 9 Arevalos by falsely impugning the victim's credibility and otherwise attempting to
 10 unfairly influence members of the District Attorney's office to not prosecute Arevalos.
 11 After the District Attorney declined to prosecute Arevalos, SDPD supervisory
 12 officials, in particular, Assistant Chief Robert Kanaski, returned Arevalos to his
 13 previous duties with the traffic division without imposing any reasonable disciplinary
 14 actions upon him.

15 17. From 2003 to the present, SDPD, its supervisory officials and the City
 16 instituted a procedure for investigating citizens' complaints of police officer
 17 misconduct that was inadequate and designed to not impartially investigate such
 18 complaints. Such policy or policies relegated citizens' complaints to the SDPD of
 19 officer misconduct to second-class status where such complaints were either not
 20 investigated at all, or received less than an impartial investigation by SDPD and its
 21 supervisory officials.

22 18. The City, the SDPD and its supervisory officials had policies that have
 23 continued through to the present of:

24 a. Failing and refusing to establish or enforce administrative
 25 procedures and training to ensure safety of detainees or arrestees;

26 b. Failing and refusing to adequately discipline police officers, like
 27 Arevalos and others, for acts of abuse and misconduct, conduct that violated SDPD
 28 department procedures or conduct unbecoming a police officer;

1 c. Failing and refusing to impartially investigate citizen's complaints
2 of alleged abuse or misconduct by police officers;

3 d. Reprimanded, threatened, intimidated and demoted police officers
4 who reported acts of misconduct or abuse by other officers;

5 e. Covering up acts of police officer misconduct or sanctioned a
6 code of silence by police officers commonly referred to as the "Blue Wall," which
7 resulted in complaints of police officer misconduct not being investigated or not being
8 adequately and impartially investigated;

9 f. Failing and refusing to adequately supervise the actions of police
10 officers under their control and guidance;

11 g. Intentionally mischaracterizing and improperly identifying
12 complaints against Arevalos and other police officers of suspected police misconduct
13 against citizens as low-level "Public Service Inquiries" in an attempt to dissuade
14 victims of suspected misconduct, other police officers and witnesses from telling their
15 stories of suspected officer misconduct and, also, to avoid having to report such
16 complaints to the Citizen's Review Board On Police Misconduct, IA or the City's
17 Mayor's office, or others, and through this, to prevent complete, objective and factual
18 investigations of such complaints and avoid possible bad publicity in the media about
19 the SDPD and its police officers, in particular, the chief of police, and the SDPD
20 upper chain of command;

21 i. Allowing the "unwritten policy" described in paragraph 12 to exist;
22 and

23 j. Failing to have in place a specific written department policy that
24 mandated all police officers who either witnessed, or who received verbal reports of
25 on-the-job police officer misconduct to report such alleged misconduct to SDPD
26 supervisory officials, including, but not limited to, IA.

27 19. In addition and upon information and belief, SDPD, its supervisory
28 officials and the City knowingly sanctioned or allowed a pattern of conduct by male

1 police officers, including traffic division officers, that consisted of patrolling the
2 Gaslamp Quarter Downtown San Diego, and certain beach community areas, that
3 consisted of a party-type atmosphere where male police officers, including
4 supervisors, such as, for example, Sergeant Friedman, were attempting to get dates
5 with or pick up women while on duty.

6 20. SDPD, its supervisory officials and the City from at least 1999 to the
7 present:

8 a. Knowingly, with gross negligence and with deliberate indifference
9 of the constitutional rights of citizens, maintained and permitted an official policy and
10 custom of permitting the occurrence of the types of wrongs alleged in this complaint;

11 b. Maintained, fostered, condoned or else failed to correct wrongful
12 conduct and, through this, created an official policy practice or custom of permitting
13 the occurrence of the types of wrongs alleged in this complaint;

14 c. Maintained, fostered or condoned policies and customs, including
15 but not limited to, deliberate indifferent training of its police officers about what
16 constituted unreasonable searches or seizures of citizens;

17 d. Maintained, fostered or condoned policies and customs that
18 included the express and/or tacit encouragement to its police officers to ignore
19 unlawful conduct and/or to ratify police misconduct by officers failing to intercede
20 when unlawful conduct was underway and/or by making material omissions in police
21 reports to prevent detection of unlawful conduct; and

22 e. Maintained, fostered, condoned or failed to conduct adequate
23 investigations of police misconduct to prevent future misconduct from occurring.

24 21. In or around 2003, the SDPD chief, then William Lansdowne, other
25 SDPD supervisory officials and the City disbanded the SDPD's 20-year old anti-
26 corruption unit, the "Professional Standards Unit," or PSU. The PSU had, as its
27 official charge, the responsibility of actively and aggressively investigating, uncovering
28 and prosecuting police misconduct, including misconduct that was subject to

1 complaints by members of the public allegedly victimized by police officers charged
 2 with protecting and serving citizens of San Diego. The elimination of the PSU, this
 3 specialized unit, was a signal and affirmation to the SDPD, its police officers and its
 4 supervisory officials that those police officers who chose to exploit their positions of
 5 power, authority and trust by victimizing members of the very community they had
 6 sworn to protect would not be investigated, prosecuted, pursued or punished for their
 7 actions. The message was that such suspected victimization and police misconduct
 8 would be tolerated, protected, covered up and/or ignored. In addition, Chief
 9 Lansdowne instituted a process, manner and method by which complaints against
 10 police officers were handled that significantly altered and, in fact, prevented members
 11 of the public from lodging complaints against police officers directly with the IA.
 12 Chief Lansdowne instituted a policy that denied the public access to IA and required
 13 citizens to lodge complaints of suspected police officer misconduct with low-level
 14 desk officers at local stations who were not trained to handle such citizen complaints.
 15 This policy change was motivated by the SDPD, the City and the SDPD supervisory
 16 officials' desire to deter, avoid and prevent full reporting and investigation of officer-
 17 related misconduct through intimidation, harassment, embarrassment, frustration and
 18 obstruction of the public means of seeking redress for such police officer related
 19 misconduct, in reality, the "unwritten policy" described in paragraph 12.

20 22. The SDPD police officer, Hays, who committed the wrongful acts against
 21 plaintiffs Davis, Johnson, Ariza and others, as alleged in this complaint, attended the
 22 police academy in 2009 and 2010 and was hired as a police officer with the SDPD and
 23 the City in late 2009 or early 2010. He was then aged 26 and was the son-in-law of
 24 then SDPD Captain and now Assistant Chief, Mark Jones, a veteran officer of some
 25 30 years, who now heads SDPD's Special Operations Unit

26 23. The SDPD training sergeant at the academy when Hays attended it was
 27 one Sandra Rapalee (who is now a Lieutenant and head of the SDPD Training Unit).
 28 Hays' field training officer, Mark Lopez, recommended to Rapalee and other SDPD

1 supervisory officials at the academy that Hays' performance at the academy was well-
 2 below average, he was unfit to be a SDPD police officer and he should be "washed
 3 out" and not hired as a police officer. On information and belief, Jones, who in 2009
 4 and 2010 was not assigned to the academy or involved with police officer candidates'
 5 training or evaluations, violated SDPD policy and wrongfully interfered with and
 6 influenced the potential decision by Rapalee, or other training officers at the academy
 7 to wash his son-in-law, Hays, out. On information and belief, Jones interceded with
 8 Rapalee asking her to return a favor he did for her and not wash Hays out of the
 9 academy. On information and belief, Rapalee did this and rejected the
 10 recommendation of Hays' training officer, Lopez, to wash Hays out of the academy.
 11 As a result, Hays, who was unfit to be a police officer and should not have been hired
 12 as a police officer was hired as an officer by SDPD.

13 24. The City, SDPD and SDPD supervisory officials, failed to properly test,
 14 screen, examine, evaluate or train Hays before hiring him as a police officer. As a
 15 result, the City, SDPD and SDPD supervisory officials failed to properly identify Hays
 16 as a person who was unfit to be a police officer. Had the City, SDPD and SDPD
 17 supervisory officials properly tested, screened, examined, evaluated and trained Hays,
 18 he would never have been hired as a police officer.

19 25. In March 2011, after a report by one Jane Doe to the SDPD and the City
 20 that Arevalos had sexually assaulted her during a DUI traffic stop on March 9, 2011,
 21 Arevalos was fired from his job as a police officer and charged by the District
 22 Attorney with crimes committed against the Jane Doe and various other victims,
 23 *People of the State of California v. Anthony Arevalos*, San Diego Superior Court
 24 Case No. SCD233024. On November 17, 2011, Arevalos was convicted of the
 25 following crimes:

26 a. Jane Doe, sexual battery, Penal Code § 243.4(a), soliciting a bribe,
 27 Penal Code § 68, assault and battery, Penal Code § 149 and misdemeanor false
 28 imprisonment, Penal Code §§ 236, 237(a);

1 b. Jeannie E., soliciting a bribe, Penal Code § 68, misdemeanor false
 2 imprisonment, Penal Code §§ 236, 237(a);

3 c. Melissa Wilde, soliciting a bribe, Penal Code § 68, assault and
 4 battery, Penal Code § 149 and misdemeanor false imprisonment, Penal Code §§ 236,
 5 237(a);

6 d. Melissa Marin., soliciting a bribe, Penal Code § 68, misdemeanor
 7 false imprisonment, Penal Code §§ 236, 237(a); and

8 e. Melissa R., soliciting a bribe, Penal Code § 68.

9 26. The SDPD's and District Attorney's investigation of Arevalos instigated
 10 by the Jane Doe incident revealed numerous other incidents of criminal misconduct by
 11 Arevalos consisting of false imprisonment, false arrest, assault and battery, sexual
 12 assault and battery and soliciting bribes from young women he allegedly pulled over
 13 for Vehicle Code/traffic violations between 2009 and March 2011. The additional
 14 victims included Mary Bracewell, Dani Fisher, Talia Tortora, Lacy White, Marjan
 15 Montazemi and Emma M., as well as at least five other victims.

16 27. In 2011, then SDPD Chief, Lansdowne, promised the public that the
 17 City, SDPD and SDPD supervisory officials would review and revise all policies for
 18 identifying, reporting, documenting and investigating police officer misconduct, either
 19 misconduct reported by a citizen, or witnessed by other police officers, as well as
 20 review and revise the procedures for disciplining police officers proved to have
 21 engaged in misconduct. The City, SDPD and SDPD supervisory officials failed to do
 22 this and, instead, allowed the situation and circumstances described in paragraphs 10
 23 through 21 to continued unchanged and unabated.

24 28. In 2011, then Chief Lansdowne also promised the public that the City,
 25 SDPD and SDPD supervisory officials would do a top to bottom investigation and
 26 review and institute the necessary changes in departmental policies so that SDPD
 27 police officers, as well their supervisors, were properly trained and supervised to
 28 insure that incidents of suspected police misconduct were identified, reported,

1 documented and investigated. This promise of creating and implementing new SDPD
2 policies, rules and procedures to create a "standard of excellence" were not done by
3 the City, SDPD and SDPD supervisory officials. Again, the situation and
4 circumstances described in paragraphs 10 through 21 were allowed to continue
5 unchanged.

6 29. Landsdowne also promised the public in 2011 that the City, SDPD and
7 SDPD supervisory officials would institute a written department-wide policy and
8 procedure that mandated all police officers who either witnessed or who received
9 verbal reports by the public of suspected police officer misconduct to report the
10 alleged misconduct to SDPD supervisory officials or to IA. The City, SDPD and
11 SDPD supervisory officials failed to institute such a policy until April 29, 2014.

12 30. In 2011, then Chief Landsdowne also promised the public that the City,
13 SDPD and SDPD supervisory officials would investigate the earlier reports and
14 incidents of Arevalos' misconduct, as alleged in paragraphs 10 and 16, to determine
15 if other police officers were involved in the misconduct, or if police officers and
16 SDPD supervisory officials had handled the incidents and complaints properly.
17 Despite this promise, the City, SDPD and SDPD supervisory officials never ordered
18 or conducted any such investigation.

19 31. As a result of the facts alleged in paragraphs 10 through 30, misconduct
20 against citizens by police officers, like Hays, as alleged below, was allowed to and did
21 continue.

22 32. Hays, as it turned out, was more of a sexual predator, who abused his
23 power and authority as a SDPD police officer to either illegally and forcibly solicit
24 and/or to obtain sexual favors from women he dealt with during the course of
25 performing his duties as a police officer, than Arevalos. The City, SDPD and its
26 supervisory officials learned in January or February 2014 about the following
27 suspected criminal misconduct by Hays while he was performing his duties as a police
28 officer on these eight victims and possibly others:

a. Davis, false imprisonment, sexual assault and battery, indecent exposure, forcible oral copulation, soliciting a bribe, early October, 2012;

b. Johnson, false imprisonment, approximately August 9, 2012;

c. Ariza, sexual assault and battery, indecent exposure, false imprisonment, June 12, 2013;

d. Jakema R., false imprisonment, sexual assault and battery, October 30, 2013;

e. Melanie W., false imprisonment, sexual assault and battery,
December 23, 2013;

f. Amber P., false imprisonment, sexual assault and battery,
December 23, 2013;

h. Jane Doe 4, false imprisonment, December 24, 2013; and

g. Jane Doe 7, false imprisonment, sexual assault and battery, October 2013.

33. On February 9, 2014, the SDPD arrested Hays charging him with felonies and misdemeanors involving his alleged crimes committed against Jakema R., Melanie W., Amber P. and Jane Doe 4. On February 18, 2014, the District Attorney filed a criminal complaint against Hays, *People v. Hays*, San Diego Superior Court Criminal Case No. SCD253998, charging Hays with felonies and misdemeanors for alleged crimes committed against Jakema R., Melanie W., Amber P. and Jane Doe 4. Hays resigned as a police officer from SDPD and the City on February 19, 2014. Hays is currently free on \$130,000 bond awaiting trial.

FIRST CAUSE OF ACTION
**(Violation Of Civil Rights, 42 U.S.C. § 1983, By Plaintiff Michelle Davis
Against Defendants City of San Diego, Christopher R. Hays)**

34. Davis realleges paragraphs 1 through 33.

35. In early October 2013, on a Friday or weekend night around 1:00 to 2:00 a.m., Davis was a passenger in her cousin Frederick Sparrow's car. They had been with friends at a sports bar and Davis had been drinking alcoholic beverages. Sparrow

1 was driving west on El Cajon Boulevard near the 7200-7300 block to take Davis to her
 2 home that was several blocks south at 4650 Harbinson Avenue, La Mesa. The car
 3 stalled out in the middle of El Cajon Boulevard near the center median. Sparrow left
 4 Davis in the passenger seat of the car and walked in the direction of 70th Street to get
 5 help.

6 36. Shortly after the car stalled, Hays, who was in uniform, on duty and on
 7 patrol in an SDPD police cruiser at the time, arrived on the scene and parked his
 8 vehicle behind Sparrow's car. He approached Davis, who was still sitting in the car,
 9 and asked her what happened. She told him the car had stalled and Sparrow had left
 10 to get help. Hays asked her if she had been drinking and if she had been driving, not
 11 necessarily in that order. She told him she had been drinking, but had not been
 12 driving. They waited about 10 to 15 minutes for Sparrow to return. When he did not,
 13 Hays told Davis he would have to call a tow truck and have the car towed because it
 14 was a traffic hazard. He did call the tow truck and after it had arrived and left with
 15 Sparrows' car, Hays offered to drive Davis to her home on Harbinson Avenue. She
 16 agreed.

17 37. Hays then drove Davis to her home on Harbinson Avenue in the SDPD
 18 police cruiser. Davis was sitting in the front seat with him. When they arrived at
 19 Davis' home, he parked the car and told Davis before she got out that he could still
 20 arrest her and take her to jail for DUI because, he said, "You were probably driving,"
 21 but if you "go down on me" I will let you out. Davis was in fear of being arrested and
 22 jailed, or of Hays doing something to injure her, so she agreed and then orally
 23 copulated him to completion in the front seat of his patrol car. Davis then got out of
 24 the car and went inside her home.

25 38. Through the conduct of the City and Hays, Davis was deprived of rights,
 26 privileges and immunities secured to her by the Fourth and Fourteenth Amendments
 27 of the Constitution of the United States, and similar provisions of the California
 28 Constitution by her unreasonable seizure and detention, and unlawful intrusion into and

1 violation of her body and by such defendants engaging in conduct that abused their
2 power and authority as a police officer to the extent that shocks the conscience.

3 39. Davis was harmed by the City and Hays' conduct that was a substantial
4 factor that caused her to suffer severe emotional distress, shame, humiliation, fear,
5 shock, extreme nervousness, disgust, as well as physical injury, that has damaged her
6 in an amount that exceeds \$25,000.

7 40. Hays acted with malice or oppression as defined in California Civil Code
8 § 3294, which entitles Davis to recover punitive damages against Hays.

9 41. Davis has incurred and will incur attorneys' fees in prosecuting this claim
10 against the City and Hays, which fees are recoverable from such defendants under 42
11 U.S.C. § 1988.

SECOND CAUSE OF ACTION
**(Violation Of Civil Rights, 42 U.S.C. § 1983, By Plaintiff Michelle Davis
Against Defendants City of San Diego, Christopher R. Hays)**

14 || 42. Davis realleges paragraphs 1 through 37.

15 43. Davis has constitutional interests and rights under the Fourth and
16 Fourteenth Amendments to the U.S. Constitution and similar provisions of the
17 California Constitution to be free from an unreasonable seizure or detention of her
18 person, sexual harassment or violation of her person during such detention and arrest,
19 as well as the right to not have her body violated by a law enforcement officer.

44. The acts of Hays and the City as alleged above, constituted a deprivation
of or a violation of Davis' constitutional rights under the U.S. and California
Constitutions.

23 || 45. Davis realleges paragraphs 39 through 41.

THIRD CAUSE OF ACTION
**(Violation Of Civil Rights, 42 U.S.C. § 1983, By Plaintiff Claudia Ariza
Against Defendants City of San Diego, Christopher R. Hays)**

26 ||| 46. Ariza realleges paragraphs 1 through 33.

27 47. On June 12, 2013, Ariza was residing at 3735 College Avenue, San Diego,
28 with one Daniel Gerken. On that date in the late morning, she called 911 for the SDPD

1 to respond and protect her from domestic violence by Gerken. One of the on-duty,
 2 uniformed SDPD officers who responded to this call was Hays. The police officers
 3 discovered Gerken hiding on the roof of the residence and arrested him.

4 48. After the arrest and the other SDPD officers had left with Gerken, Hays
 5 remained behind inside Ariza's residence. He cornered her in a room in the house,
 6 stared at her breasts, smiled at her and then approached and physically hugged her
 7 tightly pulling her breasts hard against him. Hays then backed away, unzipped his
 8 pants and pulled out his then erect penis and testicles and masturbated in front of
 9 Ariza.

10 49. Ariza had noticed Hays' wedding ring and asked if he was married and
 11 asked how he could do such a thing to his wife. Hays became enraged, put his penis
 12 and testicles back in his pants and began to leave. Ariza asked if he would be coming
 13 back and he angrily said yes.

14 50. Over the next weeks and on at least two occasions through August 2013,
 15 an SDPD police car drove by Ariza's house and shined a search light at the house as
 16 the car drove past.

17 51. Through the conduct of the City and Hays, Ariza was deprived of rights,
 18 privileges and immunities secured to her by the Fourth and Fourteenth Amendments
 19 of the Constitution of the United States, and similar provisions of the California
 20 Constitution by her unreasonable seizure and detention, and unlawful intrusion into and
 21 violation of her body and by such defendants engaging in conduct that abused their
 22 power and authority as a police officer to the extent that shocks the conscience.

23 52. Ariza was harmed by the City and Hays' conduct that was a substantial
 24 factor that caused her to suffer severe emotional distress, anxiety, panic attacks,
 25 depression, shame, humiliation, fear, shock, extreme nervousness, disgust, as well as
 26 physical injury, that has damaged her in an amount that exceeds \$25,000. Ariza has
 27 also incurred expenses from healthcare providers for treatment for such physical and
 28 psychological injuries.

53. Hays acted with malice or oppression as defined in California Civil Code § 3294, which entitles Ariza to recover punitive damages against Hays.

54. Ariza has incurred and will incur attorneys' fees in prosecuting this claim against the City and Hays, which fees are recoverable from such defendants under 42 U.S.C. § 1988.

FOURTH CAUSE OF ACTION
**(Violation Of Civil Rights, 42 U.S.C. § 1983, By Plaintiff Claudia Ariza
Against Defendants City of San Diego, Christopher R. Hays)**

55. Ariza realleges paragraphs 1 through 33, and 47 through 50.

9 56. Ariza has constitutional interests and rights under the Fourth and
10 Fourteenth Amendments to the U.S. Constitution and similar provisions of the
11 California Constitution to be free from an unreasonable seizure or detention of her
12 person, sexual harassment or violation of her person during such detention and arrest,
13 as well as the right to not have her body violated by a law enforcement officer.

14 57. The acts of Hays and the City, as alleged above, constituted a deprivation
15 of or a violation of Ariza's constitutional rights under the U.S. and California
16 Constitutions.

17 58. Ariza realleges paragraphs 52 through 54.

FIFTH CAUSE OF ACTION
**(Violation Of Civil Rights, 42 U.S.C. § 1983, By Plaintiff Nicole Johnson
Against Defendants City of San Diego, Christopher R. Hays)**

59. Johnson realleges paragraphs 1 through 33.

21 60. Around August 9, 2012 at about 11:00 a.m., Johnson was driving her car
22 on 58th Street south of El Cajon Boulevard, San Diego. Hays was on duty as an
23 SDPD police officer, in uniform and patrolling this area in his police cruiser. Using the
24 lights on the police cruiser, Hays stopped Johnson for an equipment infraction on her
25 car — driving with a malfunctioning rear brake light. During the approximate 20 to
26 25 minute traffic stop, Hays engaged in a personal conversation with Johnson and
27 asked her unnecessary and unwanted personal questions, was she married, was her
28 husband home and did she have children. He then told Johnson to get out of her car

1 because there was a warrant for her arrest. Johnson refused. She told Hays there
2 could not possibly be a warrant for her arrest and that she would not get out of her car
3 until he explained to her what the warrant was for. He never did. Instead, Hays told her
4 he was just joking and was only trying to get her out of the car. Johnson told him to
5 either give her a ticket, or let her go. Hays continued with the unnecessary and
6 unwanted personal conversation with Johnson, telling her things that were unrelated to
7 the traffic stop, that he was getting divorced or was separated from his wife, he was
8 lonely and he would come to her house and fix the taillight if her husband was not
9 home. Hays also asked to go out to dinner with him. Johnson said no and again asked
10 him to either ticket her or let her go. He let her go, but followed her for some time after
11 she drove away.

12 61. Through the conduct of the City and Hays, Johnson was deprived of
13 rights, privileges and immunities secured to her by the Fourth and Fourteenth
14 Amendments to the U.S. Constitution and provisions of the California Constitution by
15 her unreasonable seizure and detention and engaging in conduct that abused Hays'
16 power and authority as a police officer to the extent that it shocks the conscience.

17 62. As a legal result of the acts of the City and Hays, Johnson sustained
18 severe emotional distress consisting of fear, humiliation, shock and extreme
19 nervousness that has damaged her in an amount that exceeds \$25,000.

63. Hays acted with malice or oppression as defined in California Civil Code
§ 3294, which entitles Johnson to recover punitive damages against him.

22 64. Johnson has incurred and will incur attorneys' fees prosecuting this claim
23 against the City and Hays, which fees are recoverable from such defendants under 42
24 U.S.C. § 1988.

SIXTH CAUSE OF ACTION
**(Violation Of Civil Rights, 42 U.S.C. § 1983, By Plaintiff Nicole Johnson
Against Defendants City of San Diego, Christopher R. Hays)**

27 ||| 65. Johnson realleges paragraphs 1 through 33 and 60.

28 66. Johnson has constitutional interests and rights under the Fourth and

Fourteenth Amendments to the U.S. Constitution and provisions of the California Constitution to be free from an unreasonable seizure or detention of their person and sexual harassment during such detention and potential arrest.

67. The acts of the City and Hays constituted a deprivation or violation of Johnson's constitutional rights.

68. Johnson realleges paragraphs 62 through 64.

**SEVENTH CAUSE OF ACTION
(Violation Of Civil Rights, 42 U.S.C. § 3789d, By All Plaintiffs
Against Defendant City of San Diego)**

69. Plaintiffs reallege paragraphs 1 through 68.

70. The City and SDPD have been the recipients of assistance and funding from the federal government under the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3799d.

71. The City, SDPD and SDPD supervisory officials by engaging in the discriminatory acts in connection with programs and/or activities funded in whole or in part with funds provided to the City and SDPD under 42 U.S.C. § 3789d, as alleged in this complaint, violated and are in violation of the specific provisions of 42 U.S.C. § 3789d, that prohibits such discrimination. Plaintiffs, therefore, request a finding under 42 U.S.C. § 3789d(e)(2)(A) that the City and SDPD has engaged in a pattern or practice of discrimination that has violated 42 U.S.C. § 3789d(e)(1).

JURY DEMAND

72. Plaintiffs demand a jury trial.

REQUEST FOR RELIEF

Therefore, plaintiffs Michelle Davis, Nicole Johnson and Claudia Ariza request a judgment against defendants City of San Diego and Christopher R. Hays for:

- a. General damages according to proof;
 - b. Special damages according to proof;
 - c. Punitive damages against Hays;
 - d. A finding that the City has engaged in a pattern or practice of

- 1 discrimination that violates 42 U.S.C. § 3789d(e)(1);
2 e. Reasonable attorneys' fees under 42 U.S.C. § 1988e;
3 f. Costs of suit; and
4 g. Any other proper relief.

5
6 Date: June 18, 2014

The Gilleon Law Firm

7 /s/ James C. Mitchell

8 James C. Mitchell, Attorneys for
9 Plaintiffs Michelle Davis, Nicole Johnson
and Claudia Ariza

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JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS MICHELLE DAVIS; NICOLE JOHNSON; CLAUDIA ARIZA		DEFENDANTS CITY OF SAN DIEGO, a municipal corporation; CHRISTOPHER HAYS				
(b) County of Residence of First Listed Plaintiff <u>SAN DIEGO</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i>		County of Residence of First Listed Defendant <u>SAN DIEGO</u> <i>(IN U.S. PLAINTIFF CASES ONLY)</i>				
(c) Attorneys (Firm Name, Address, and Telephone Number) JAMES C. MITCHELL(SBN 87151);DANIEL M. GILLEON (SBN 195200) THE GILLEON LAW FIRM 1320 COLUMBIA ST., STE. 200, SAN DIEGO, CA 92101; 619.702.8623		Attorneys (<i>If Known</i>) JAN GOLDSMITH, CITY ATTORNEY CITY OF SAN DIEGO 1200 THIRD AVE., STE. 1200, SAN DIEGO, CA 92101; 619.236.8486				
II. BASIS OF JURISDICTION (Place an "X" in One Box Only)		III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) <i>(For Diversity Cases Only)</i>				
<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i>	Citizen of This State <input type="checkbox"/> 1 <input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State <input type="checkbox"/> 4 <input type="checkbox"/> 4			
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i>	Citizen of Another State <input type="checkbox"/> 2 <input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State <input type="checkbox"/> 5 <input type="checkbox"/> 5			
		Citizen or Subject of a Foreign Country <input type="checkbox"/> 3 <input type="checkbox"/> 3	Foreign Nation <input type="checkbox"/> 6 <input type="checkbox"/> 6			
IV. NATURE OF SUIT (Place an "X" in One Box Only)						
CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES		
	<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/ Exchange
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	PROPERTY RIGHTS	SOCIAL SECURITY	IMMIGRATION	
	<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	FORFEITURE/PENALTY <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
V. ORIGIN (Place an "X" in One Box Only)						
<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from Another District (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 U.S.C. § 1983, 42 U.S.C. § 3789d						
VI. CAUSE OF ACTION		Brief description of cause: VIOLATION OF CIVIL RIGHTS				
VII. REQUESTED IN COMPLAINT:		<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.	DEMAND \$ 75,000.00	CHECK YES only if demanded in complaint: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
VIII. RELATED CASE(S) IF ANY		(See instructions):		JUDGE	DOCKET NUMBER	
DATE 06/18/2014		SIGNATURE OF ATTORNEY OF RECORD /s/ James C. Mitchell		JUDGE		MAG. JUDGE
FOR OFFICE USE ONLY						
RECEIPT #		AMOUNT		APPLYING IFP	JUDGE	MAG. JUDGE